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| 10/529,329   | 05/23/2005  | Hendricus Antonius Hoogland | 294-211 PC/D/US     | 8654             |
| 23869 7590 12/17/2008<br>HOFFMANN & BARON, LLP<br>6900 JERICHO TURNPIKE<br>SYOSSET, NY 11791 |             |                             |                     |                  |
| EXAMINER   |             |                             |                     |                  |
| AYRES, TIMOTHY MICHAEL   |             |                             |                     |                  |
| ART UNIT   |             | PAPER NUMBER                |                     |                  |
| 3637   |             |                             |                     |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/529,329

**Applicant(s)**HOOGLAND, HENDRICUS  
ANTONIUS**Examiner**

TIMOTHY M. AYRES

**Art Unit**

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7, 10-12, 19, 20 and 24-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10-12, 19, 20 and 24-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

Please note that there has been a change in examiners to the undersigned,  
Timothy M. Ayres and any questions should be directed thereto.

#### ***Claim Rejections—35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Regarding claims 12, the phrase "preferably" in line 3 renders the claim indefinite because it is unclear whether the limitation(s) following the phrases are part of the claimed invention. See MPEP § 2173.05(d). For the purposes of this examination, the limitations following the phrases "preferably" are not considered part of the claimed invention.
4. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a

question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 8 recites the broad recitation "between 5° and 175°", and the claim also recites "approximately 90°" which is the narrower statement of the range/limitation. For the purposes of this examination, the narrower range is considered merely exemplary.

***Claim Rejections—35 USC § 102***

1. Claims 1-7, 10-12, 19, 20, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 3,880,092 to Seeber. Seeber teaches a plastic pallet having a top deck supported by three stringers with bearing elements extending upward. A first support means (34) is parallel and in the same plane as the stringer. Second supporting means (30,28) are located in a second plane within the cross support. Please note that there presently is no language presented in the claims that defines the cross support, stringer, deck, and bearing elements to be formed as separate entities and therefore it is the portions of the plastic piece that define each element.

2. Claims 1-7, 10-12, 19, 20, 24, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 4,735,154 to Hemery. Hemery teaches a plastic pallet having a top deck support by stringers (14, 44, 13) with bearing elements (8, 18, 28, 38,

48, 58, 68, 78, 88) extending upward. A first supporting means (10, B, C, D) are located in the same plane as the stringers. Second supporting means (10, A, E) are located within cross supports in a second plane.

3. Claims 1-7, 10-12, 19, 20, and 24 rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5,868,080 to Wyler. Wyler teaches a plastic pallet having a deck supported by three stingers with bearing extending upward. A first support means (32) is located in the bottom as seen in figure 11. A second support means (32) is located at the bottom of the deck as seen in figure 7E and 7B. In the specification Wyler states that such supporting elements as shown in individual configurations in the drawings can also be concurrently combined (Wyler '080, Col. 5, lines 56-61).

5. Claims 1-7, 10, 12, 19 and 20, as best understood, are rejected under 35 U.S.C. 102(e) as being anticipated by Apps, US patent 6,955,128. Apps teaches a pallet (10) having a top deck (12) and a bearing construction (14) both made of plastic (col. 5, lines 47-51); the bearing construction having stringers (136) extending in a longitudinal direction and having bearing elements (126) thereon, and cross supports (132) at right angles to the stringers; first (158,154) and second (160,161) supporting means, the first supporting means extending parallel to the stringers in the bearing construction and the second supporting means extending parallel to the cross supports.

Regarding claims 2-7, the first and second supporting means are manufactured from metal or plastic (col. 7, lines 8-15), prevent creep in the top deck and bearing

construction, have a higher modulus of elasticity than the top deck and bearing construction, and enhance the rigidity of the top deck.

4. Claims 1-7, 10-12, 19, 20, 24, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 6,622,642 to Ohanesian. Ohanesian teaches a plastic pallet having a top deck support by stingers (270) with bearing elements (310) extending upward. A first supporting means (120) are located in the same plane as the stringers. Second supporting means (120) are located within cross supports in a second plane and are perpendicular to said first support means.

***Claim Rejections—35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 11 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apps as applied to claim 10 above, and further in view of Koefeld. Apps discloses a pallet substantially as claimed, having supporting means confined in the plastic of a top deck and bearing construction, and teaches the use of an injection molding process in the construction of the pallet (col. 5, line 50), but does not specifically teach that the supporting means are injection molded in the pallet. Koefeld teaches a pallet (10) having a top deck (12) and bearing construction (14) molded from plastic, and

supporting means (36, 38) substantially confined in the plastic of the top deck and bearing construction, further teaching that the supporting means are injection molded in the pallet (col. 4, lines 48–61). Thus Apps discloses a pallet upon which the claimed injection molding of the supporting means can be seen as an improvement, and Koefeldt teaches a comparable pallet improved in the same way as claimed. One of ordinary skill in the art could have applied the known injection molding, as taught by Koefeldt, in the same way to the pallet of Apps, with predictable results. Regarding claim 26, The Examiner is taking official notice that it is well known to add holes in reinforcing members that get covered in injected molded plastic so that the plastic bonds with plastic through the hole providing a more secure fit and less chance of the plastic peeling from the reinforcing member. Therefore at the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the pallet of Apps in view of Koefeldt by adding through holes in the reinforcing members to bond the plastic better.

#### ***Response to Arguments***

5. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection. While the Apps rejection remains, what elements are what has changed due to the amendment.

***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **TIMOTHY M. AYRES** whose telephone number is (571)272-8299. The examiner can normally be reached on **MON-THU 8:00 - 5:00**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. M. A./  
Examiner, Art Unit 3637  
12/15/2008

/Janet M. Wilkens/  
Primary Examiner, Art Unit 3637